

AN ACT

RELATING TO INSURANCE; AMENDING PROVISIONS OF THE NEW MEXICO
INSURANCE CODE PERTAINING TO SURPLUS LINES INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO

Section 1. Section 59A-14-5 NMSA 1978 (being Laws
1984, Chapter 127, Section 243, as amended) is amended to
read:

"59A-14-5. SIGNATURE AND SPECIAL ENDORSEMENT OF
SURPLUS LINES POLICY.--Every insurance contract procured and
delivered as surplus lines insurance pursuant to Chapter
59A, Article 14 NMSA 1978 shall bear the name, address and
signature of the surplus lines broker who procured it and
have stamped, printed or otherwise displayed prominently in
boldface ten-point or larger type either upon its
declarations page or by attachment of an endorsement, the
form of which may be promulgated by the superintendent, the
following: "This policy provides surplus lines insurance by
an insurer not otherwise authorized to transact business in
New Mexico. This policy is not subject to supervision,
review or approval by the superintendent of insurance. The
insurance so provided is not within the protection of any
guaranty fund law of New Mexico designed to protect the
public in the event of the insurer's insolvency."."

Section 2. Section 59A-14-11 NMSA 1978 (being Laws
1991, Chapter 125, Section 17) is amended to read:

"59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

A. The producing broker shall complete, execute
and provide to the surplus lines broker an affidavit in
substantially the form required by the superintendent, as to

the diligent efforts to place the coverage with authorized insurers and the results thereof. The affidavit shall affirm that the insured was expressly advised prior to placement of the insurance and in the insurance policy that:

(1) the surplus lines insurer with which the insurance was to be placed is not an authorized insurer in this state and is not subject to the superintendent's supervision; and

(2) in the event the surplus lines insurer becomes insolvent, claims will not be paid nor will unearned premiums be returned by any New Mexico insurance guaranty fund.

B. Within sixty days after the end of each calendar quarter, the surplus lines broker shall file with the superintendent a copy of each of the producing broker affidavits required by Subsection A of this section and a copy of the policy declarations page of all surplus lines insurance business transacted during the calendar quarter. The surplus lines broker shall preserve the original producing broker affidavits in compliance with Section 59A-14-10 NMSA 1978. The declaration pages shall be confidential and shall not be subject to public inspection. The superintendent's copy of the affidavits shall be open to public inspection. If the producing broker has failed to provide the producing broker affidavit, the surplus lines broker shall at the time of quarterly filing, notify the superintendent of the producing broker's failure to comply.

C. Each surplus lines broker shall, within sixty days after expiration of each calendar quarter, file with the superintendent a statement under the surplus lines

broker's oath of all surplus lines insurance business transacted during such calendar quarter. The statement shall be on forms as prescribed and furnished by the superintendent and shall contain such information relative to the surplus lines insurance transaction as the superintendent may reasonably require for the purposes of Chapter 59A, Article 14 NMSA 1978."

Section 3. Section 59A-14-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 250) is amended to read:

"59A-14-12. PREMIUM TAX ON SURPLUS LINE INSURANCE.--

A. Within sixty days after expiration of a calendar quarter the surplus line broker shall pay to the superintendent for the use of the state of New Mexico a tax on gross premiums received, less returned premiums, on surplus line business transacted under the surplus line broker's license during such calendar quarter as shown by the quarterly statement filed with the superintendent as provided under Section 59A-14-11 NMSA 1978. The tax shall be at the same rate as is applicable to premiums of authorized insurers under Section 59A-6-2 NMSA 1978.

B. For purposes of this section "premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal tax; regulatory authority fee; or examination fee, if any.

C. If a surplus line policy covers risks or exposures only partially in this state the tax payable shall be computed upon the proportion of the premium properly allocable to risks or exposures located in this state.

D. A penalty of ten percent of the amount of tax originally due, plus one percent of such tax amount for each month or fraction thereof of delinquency after the first thirty days of delinquency, shall be paid by the surplus line broker for failure to pay the tax in full within sixty days after expiration of the calendar quarter as provided in Subsection A of this section; except, that the superintendent may waive or remit the penalty if he finds that the failure or delay in payment arose from excusable mistake or excusable inadvertence." _____
